



2024:DHC:7419



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON – 17.09.2024**

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PRONOUNCED ON – 25.09.2024+ **W.P.(CRL) 2377/2024, CRL.M.A.23202/2024****RACHIT KAPOOR**

.....Petitioner

Through: Petitioner in person with Ms.Shreya
Kapoor

versus

UNION OF INDIA

.....Respondent

Through: Mr. Amol Sinha, ASC, Mr. Kshitiz
Garg, Mr. Ashvini Kumar, Ms. Chavi
Lazarus, Advs. for State and
InspectorAmit Pratap, EOW
Mr. Amit Tiwari, CGSC with Mr.
Chetanya Puri, Mr. Shourya Rai, GP,
with Mr. Ayush Tanwar, Mr. Rahul
Bhaskar, Advs. for UOI
SI Rohit, PS VKNorth**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

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J U D G M E N T

DINESH KUMAR SHARMA.,J:

1. The present petition has been filed under Articles 226 and 227 of the Constitution of India, read with Section 482 Cr.P.C with the following prayers;

1. The court may be pleased to grant appropriate protection to the Petitioner and his family under court supervision.

2. That the court may be pleased to direct the appropriate authorities to lodge a FIR.

against the accused persons and their co-conspirators, pass orders to arrest the accused and their co-conspirators, further to investigate under the court's supervision into the crimes committed and threats being received by the Petitioner and his family and pass requisite orders for the same. Further, the Petitioner humbly prays that the Petitioner be made a part of each step of the investigation.

3. That this court may be pleased to call for the papers and records of the Criminal Revision Application no. 278210 of 2021 filed before the Hon'ble Delhi High Court and CC No. 772/ 2020 pending in the Patiala house court to be heard along with the present petition and pass appropriate orders to lodge an FIR and arrest the accused persons in the same. Further, the Petitioner humbly prays that all the facts stated under this Writ Petition be amended to the facts of the Criminal Revision Application no. 278210 of 2021.

4. In the interim, to immediately conduct a search and investigation for the cameras and other devices installed in the Petitioner's house at 1395 C-1 Vasant Kunj, New Delhi. 36

5. Interim and ad-interim relief(s) in terms of prayer 1-5 above.

6. Any other order(s) this Hon'ble Court may deem fit.



(A) FACTS:

2. In brief the facts alleged are that the Petitioner who appears in person is the son-in-law of one Mr. Deepak Chaudhary who was the president of Delhi Stock Exchange (1997-1998). It is stated that Mr. Deepak Chaudhary died on 24.07.1999. It is alleged that the demise of Mr. Deepak Chaudhary was unusual and that he was murdered by the accused persons who are alleged to be high dignitaries and officials.

It is alleged that pursuant to the demise of Mr. Deepak Chaudhary multiple demat and trading accounts have been opened and/or operated by the accused persons, in their name. Funds were also siphoned off by way of these accounts.

3. It is further alleged that, one HUF account was illegally opened, and the opening of the said account came to the knowledge of the wife of the petitioner, who is the daughter of Mr. Deepak Chaudhary, while redeeming certain mutual funds from Aditya Birla Capital. These mutual funds were an investment by Mr. Deepak Chaudhary in the name of his son and daughter (wife of the petitioner herein).

4. It is alleged that Petitioner and his family have made several complaints with various central agencies including but not limited to the RBI, ED, PMO, SFIO, CBI, SEBI, Mumbai Police, Delhi Police, EOW, Home ministry, Finance Ministry and others. However, no action was taken on any of their complaints. Subsequently, an application under Section 156(3) was filed by the wife of the petitioner, before the Patiala House Court, Delhi which was dismissed by the learned CMM vide order dated 07.12.2020. The learned CMM expressed that the complaint pertains to certain bank accounts and transactions which is based on documentary



evidence, and are in safe custody of the banks, therefore does not require any field investigation. The wife of the petitioner had moved before this court for revision against the said order dated 07.12.2020. It is pertinent to mention herein, that Criminal Revision Petition bearing No. 1121/2024 was disposed of by this Court vide order dated 12.09.2024 with liberty to the petitioner to file a revision petition before the Sessions Court.

5. Furthermore, the petitioner filed a petition before the Hon'ble Supreme Court, under Article 32, stating violation of his fundamental right envisaged under Articles 14 and 21. The Hon'ble Supreme Court vide its order dated 03.02.2023 directed this court to consider the feasibility of hearing the petition alongwith the revision proceedings pending before this court and also consider the petitioner's request for appropriate protection and security.

(B) SUBMISSIONS ON BEHALF OF THE PETITIONER

6. It is submitted that the father-in-law of the petitioner was murdered by certain high dignitaries in 1999. Further the accused persons also conspired to kill the petitioner's mother-in-law as well, by way of feeding her fatal medicines and giving electric shocks. Thereafter, she died under suspicious circumstances on 31.07.2023 at about an early age of 63 years.

7. It is further submitted that the petitioner's father-in-law's moveable and immovable assets were illegally transferred after his alleged murder by the accused persons. Moreover, it is submitted that multiple illegal banks accounts have also been opened and operated after the demise of the petitioner's in-laws, in the name of the petitioner's mother-in-law, father-in-law and of their companies.



8. The petitioner further submits that the crimes were discovered in 2019 and various complaints were filed before different authorities however, no action was taken. Subsequently the petitioner states that the mobile phones and laptops owned by him and his family were being tapped and hacked, used as surveillance devices on orders from the accused's, high dignitaries. Furthermore, it is submitted that software system of the Petitioner's entire residential complex comprising of 645 flats and 3000 residents in Mumbai, was illegally hacked and spy cameras were also installed to monitor the petitioner and his family members. It is also submitted that medicines were mixed in their milk which was consumed by the petitioner's 2-year-old child. Therefore, the petitioner submits that pursuant to these incidents the petitioner and his family relocated to New Delhi, but the same illegal activities were being carried out in Delhi aswell.

9. The petitioner further alleged that the house cook had mixed medicines in the food consumed by the wife of the petitioner, who was also pregnant at that time. He further alleges that this caused serious danger to the life of the petitioner's wife and unborn child therefore causing a breach of their Fundamental Rights under Articles 14 and 21. It is further alleged that the said incident was reported to the police but no action was taken, as much as the police refused to take the sample of the contaminated food and also the blood sample of the wife of the petitioner. It is also submitted by the petitioner that he, along with his family have been receiving threats that endanger their lives.

10. Therefore, the petitioner submits that by way of the present petition, he seeks issuance of an appropriate writ, proper investigation against the threats received by the petitioner and his family and quashing of the order



passed by the learned CMM on 07.12.2020 in Case No. 772/2020. In the writ petition various other factual allegations have been made, which are not being reproduced herein for the sake of brevity. It is also relevant to note that the petitioner has also not clarified about the averments made in the previous complaint.

(C) FINDINGS AND ANALYSIS

11. The Court considers that before entering into the examination of factual matrix of this case, it is necessary to test the maintainability of the writ petition on the touch stone of law. It is pertinent to mention that under Article 226, the High Courts can entertain a writ petition against any order passed by or action taken by the state and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority. Generally, the petition under Article 226 is based on violation of Fundamental Rights and/or principles of natural justice, where an order or proceeding has been carried out without jurisdiction or the vires of an Act is challenged, and this must be given due consideration, ignoring the fact that the aggrieved person has an effective alternative remedy available. It is well settled that when a statutory forum is created by law for redressal of grievances or an alternate efficacious remedy is available under the same Code, a writ petition should not be entertained ignoring the statutory dispensation. It is also trite to note that in exercise of power under Article 226, the High Court does not sit in appeal and therefore, cannot go into disputed question of facts.

Although the powers conferred upon the High Court under Article 226 of the Constitution are very wide and there is no express limitation on exercise of that power. However, one cannot be oblivious of the rules of self-



imposed restraint evolved by the Constitutional Courts, which every Court is bound to keep in view while exercising power under Article 226 of the Constitution. Therefore, as per the rule of self-imposed restraint a writ petition will not be entertained if an alternative effective remedy is available to the aggrieved person. The Supreme Court in *Thansingh Nathmal v. Superintendent of Taxes, Dhubri and Ors.* 1964 SCC OnLine SC 13 has *inter alia* observed that the High Court should not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. It was further *inter-alia* observed that it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

12. The Court is conscious of the fact that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion. However, the rule of caution is that the High Court should not entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. if the law provides a mechanism for redressal of his grievance.

13. In *Sakiri Vasu v. State of U.P.* (2008) 2 SCC 409 it was *inter-alia* held that the aggrieved person at the first instance may approach the Police, under Section 154 Cr. P.C. , for lodging of the FIR and if by any reason the Police Station does not do so then the aggrieved person may approach the



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Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the Jurisdictional Magistrate. If the grievance still persists, the aggrieved person has a further remedy of filing a criminal complaint under Section 200 Cr.P.C.

In the present case, record reveals that an earlier application under Section 156(3) Cr.P.C. was dismissed by the learned CMM and the Court had taken cognizance of the offences vide order dated 07.12.2020. The petitioner has not clarified that whether the allegations made in the present writ petition were not part of the private complaint before learned CMM. In any case the option of filing of second complaint on different allegation, if any, is available with the petitioner. However, the petitioner instead of approaching the Court of learned MM, which is an alternative efficacious remedy, the petitioner has invoked the jurisdiction of this Court under Article 226. It is also relevant to note that as per the mechanism provided under Cr.P.C., the Magistrate has power either to refer the complaint to the police for investigation or to take cognizance and try the complaint in accordance with law. Whereas this Court under Article 226 has only option of directing the investigating agency to investigate the matter. In cases where the facts are disputed or there are unsubstantiated allegations, it can be risky to direct investigation without examination of the facts. The Court is conscious of the fact that initiation of investigation has serious consequences.



14. Though in a given case, this Court can exercise its jurisdiction but the same should be exercised sparingly and in exceptional circumstances. The Court cannot allow itself to be used as a tool to harass on the unsubstantiated wild allegations. In ***Sakiri Vasu (Supra)*** also it was *inter alia* held that though an alternative remedy is not an absolute bar to a writ petition, yet if there is an alternate remedy, the High Court should not ordinarily interfere.

15. The Supreme Court has consistently held that the inherent powers under Section 482 should be used sparingly and in rare cases, especially when statutory remedies (like revision or appeal) are available. In ***State of Orissa v. Ujjal Kumar Burdhan, (2012) 4 SCC 547*** the Supreme Court had *inter-alia* held that the inherent powers of the High Court under Section 482 Cr.P.C. are broad but not unlimited and must be used judiciously and not arbitrarily. Such powers should be exercised sparingly and only in extraordinary cases. Intervention may be appropriate if petition discloses extremely serious allegations and requires urgent intervention of the Constitutional Court. The High Court should generally avoid interfering unless there is a clear case of gross abuse of power. The allegations in the present petition are too wide, general in nature and unsubstantiated.

16. In ***Shweta Bhadauria v. State of M.P. & Ors*** W.A. No. 247/2016 the Court has laid that a Writ Petition for the purposes of directing the respondents to lodge the FIR is not maintainable. It was *inter alia* held that:

“(1) Writ of mandamus to compel the police to perform its statutory duty u/s 154 Cr.P.C can be denied to the informant /victim for non-availing of alternative remedy u/Ss. 154(3), 156(3), 190 and 200 Cr.P.C., unless the four contingencies i.e. where the writ petition has been filed for the enforcement of any of the Fundamental Rights or



*where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged, enumerated in decision of Supreme Court in the the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.**, (1998) 8 SCC 1, come to rescue of the informant / victim.*

*(2) The verdict of Supreme Court in the case of **Lalita Kumari Vs. Government of U.P. &Ors.** (2014) 2 SCC 1 does not pertain to issue of entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C without availing alternative remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C.”*

17. In **Shakti Singh Thakur v. State of M.P. &Ors** W.A. No. 15955/2024 also the petition under Article 226 was dismissed with liberty granted to the petitioner to approach the learned MM under Section 200 Cr.P.C./ Section 223 BNSS.

18. At this juncture, without going into the merits of the case this Court considers that the present petition is liable to be dismissed with liberty granted to the petitioner to approach the Competent Court and avail the other efficacious remedies available to him.

19. The Supreme Court vide its order dated 03.02.2023 directed this court to consider the feasibility of hearing the present petition along with the revision proceedings already pending before this court in CRL.REV.P. 1121/2024. This Court has heard the petitioner and his wife Ms. Shreya Kapoor, in detail and perused the record carefully. The allegations were found to be too wide, general and vague in nature. This court vide order dated 12.09.2024 dismissed the revision petition bearing No.1121/2024 with liberty to the wife of the petitioner herein, to file the petition before the learned Sessions Court in accordance with the law.



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20. It is made clear that this court has not gone into the merits of the case and no expression made herein shall tantamount to be an expression on the merits of the case.

21. Taking in view the above dictum and catena of judgments of Apex court and various High Courts, the present petition is dismissed with liberty to the petitioner to file a fresh complaint u/s 200 Cr.P.C. and/or exhaust any other efficacious remedy available to him. However, in case the petitioner moves to the local police for security, police shall consider the same in accordance with law without any delay.

22. The present petition alongwith all pending applications are dismissed and disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 25, 2024

Pallavi/KR